

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA**

GERALD L. PARRIS,)	
)	
Plaintiff,)	
)	
v.)	Case No. CIV-14-561-JHP-SPS
)	
NANCY A. BERRYHILL,)	
Acting Commissioner of the Social)	
Security Administration,¹)	
)	
Defendant.)	

REPORT AND RECOMMENDATION

The Plaintiff was the prevailing party in this appeal of the Commissioner of the Social Security Administration’s decision denying benefits under the Social Security Act, and sought attorney’s fees in the amount of \$5,183.00, under the Equal Access to Justice Act (the “EAJA”), 28 U.S.C. § 2412. *See* Plaintiff’s Application for Award of Attorney’s Fees Pursuant to the Equal Access to Justice Act 28 U.S.C. § 2412 [Docket No. 23]. The Commissioner objected to the award of fees and urged the Court to deny the request. The Plaintiff has now submitted a supplemental application for fees under the EAJA, and has amended the total award sought to \$5,753.00, to include his preparation of a reply brief in response to the Commissioner’s objections. *See* Plaintiff’s Supplemental Application for Award of Attorney’s Fees Pursuant to the Equal Access to Justice Act 28 U.S.C. § 2412 [Docket No. 28]. The Commissioner has not responded to the Supplemental Motion, and

¹ On January 20, 2017, Nancy A. Berryhill became the Acting Commissioner of Social Security. In accordance with Fed. R. Civ. P. 25(d), Ms. Berryhill is substituted for Carolyn Colvin as the Defendant in this action.


the time for response has expired. For the reasons set forth below, the Court concludes that the Plaintiff should be awarded the requested supplemental fees under the EAJA as the prevailing party herein.

On appeal, the Plaintiff argued that the ALJ improperly rejected portions of the state reviewing physician opinion regarding his mental RFC, and this Court agreed, reversing and remanding based on this argument. The Commissioner's response to the original motion for fees under the EAJA asserted that her position was substantially justified because the arguments made before this Court were plausible and reasonable in fact and law, essentially restating the arguments made in the Response Brief. *See* 28 U.S.C. § 2412(d)(1)(A) (“[A] court shall award to a prevailing party . . . fees and other expenses . . . unless the court finds that the position of the United States was substantially justified or that special circumstances make an award unjust.”). The undersigned Magistrate Judge disagreed, and recommended that the Plaintiff be awarded the requested fees. *See* Docket No. 27.

The undersigned Magistrate Judge therefore finds that the Plaintiff should be awarded the requested attorney's fees as the prevailing party under the EAJA. *See, e. g., Gibson-Jones v. Apfel*, 995 F. Supp. 825, 826-27 n.3 (N.D. Ill. 1998) (holding that the Commissioner's position was not substantially justified where the ALJ provided an inadequate basis for denying benefits and adding: “It would be unfair to require Ms. Gibson-Jones to appeal her denial of benefits and then not award her attorney's fees because the ALJ is given a second chance to support his position.”).

Accordingly, the undersigned Magistrate Judge hereby PROPOSES the findings set forth above and RECOMMENDS that Plaintiff's Application for Award of Attorney's Fees Pursuant to the Equal Access to Justice Act 28 U.S.C. § 2412 [Docket No. 23] be deemed MOOT and that Plaintiff's Supplemental Application for Award of Attorney's Fees Pursuant to the Equal Access to Justice Act 28 U.S.C. § 2412 [Docket No. 28] be GRANTED, and that the Court award attorney's fees in the amount of \$5,753.00 as the prevailing party herein. The undersigned Magistrate Judge notes that if the Plaintiff's attorney is subsequently awarded any fees pursuant to 42 U.S.C. § 406(b)(1), said attorney shall refund the smaller amount of such fees to the Plaintiff pursuant to *Weakley v. Bowen*, 803 F.2d 575, 580 (10th Cir. 1986). Any objection to this Report and Recommendation must be filed within fourteen days. *See* Federal R. Civ. P. 72(b)(2).

IT IS SO ORDERED this 21st day of March, 2017.



Steven P. Shreder
United States Magistrate Judge
Eastern District of Oklahoma